

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Arthur Albano	Team: Team # 3	CCRB Case #: 201406557	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 06/28/2014 10:00 PM	Location of Incident: Lewis Avenue & Gates Avenue	Precinct: 81	18 Mo. SOL 12/28/2015	EO SOL 12/28/2015	
Date/Time CV Reported Mon, 06/30/2014 9:54 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 06/30/2014 9:54 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Edward Ahearne	30507	953620	PBBN
2. POM Sean McDonnell	25832	955162	PBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Jasleen Khurana	20318	955006	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean McDonnell	Abuse: PO Sean McDonnell stopped § 87(2)(b) and § 87(2)(b)	
B.POM Edward Ahearne	Discourtesy: PO Edward Ahearne spoke rudely to § 87(2)(b)	
C.POM Sean McDonnell	Off. Language: PO Sean McDonnell made remarks to § 87(2)(b) based upon race.	
D.POM Sean McDonnell	Discourtesy: PO Sean McDonnell spoke rudely to § 87(2)(b)	
E.POM Edward Ahearne	Abuse: PO Edward Ahearne issued a summons to § 87(2)(b)	
F.POM Sean McDonnell	Abuse: PO Sean McDonnell issued a summons to § 87(2)(b)	

Case Summary

On June 28, 2014, at approximately 10 p.m., § 87(2)(b) and § 87(2)(b) each purchased a 16 oz. alcoholic beverage. § 87(2)(b) purchased a Bud Light Straw-Ber-Rita and § 87(2)(b) purchased a Bud Light Lime-a-Rita, from Yoemy's Deli Grocery at the corner of Lewis Avenue and Hart Street, in Brooklyn. § 87(2)(b) and § 87(2)(b) held the drinks in a brown plastic bag, and periodically drank from the can as they were walking south on Lewis Avenue, side-by-side. § 87(2)(b) claimed that she believed the drinks were non-alcoholic.

Three uniformed officers, PO Edward Ahearne, PO Sean McDonnell, and PO Jasleen Khurana of Patrol Borough Brooklyn South, began following § 87(2)(b) and § 87(2)(b) for approximately one block. PO Ahearne and PO McDonnell then allegedly stated to § 87(2)(b) and § 87(2)(b) "Hey you, you stop, you stop. We're talking to you," causing § 87(2)(b) and § 87(2)(b) to stop walking and turn to the officers (**Allegation A**). PO McDonnell approached § 87(2)(b) and allegedly asked, "What's in the bag?" "What are you doing?" PO Ahearne allegedly stated, "Give me your fucking ID" to § 87(2)(b) (**Allegation B**). § 87(2)(b) responded, "Why do you need our IDs?" and PO McDonnell allegedly responded, "I'm going to check your ID to see if you have any warrants, because you people usually do" (**Allegation C**). § 87(2)(b) responded, "What do you mean by you people? You mean African American people, so now it's a race thing?" PO McDonnell did not respond to § 87(2)(b)'s questions, but § 87(2)(b) provided her New York State Learner's Permit. At that point, § 87(2)(b) approached § 87(2)(b) who was speaking to PO Ahearne. § 87(2)(b) stated, "Why are you speaking to me so rudely?" and "You don't have to speak to me that way." PO Ahearne allegedly responded, "Shut the fuck up and give me your fucking ID" (within **Allegation B**). § 87(2)(b) then provided PO Ahearne with her identification.

After PO McDonnell was done checking for active warrants, § 87(2)(b) asked for her identification back, and PO McDonnell allegedly responded, "I'll give you your ID back when I fucking feel like giving it back." (**Allegation D**). § 87(2)(b) and § 87(2)(b) were each issued summonses for open containers, and then PO Ahearne allegedly aggressively grabbed § 87(2)(b)'s bagged drink, whilst saying, "Give me the fucking bag." (within **Allegation B**). According to § 87(2)(b) due to forcefulness of him grabbing the drink, he spilled some of it on himself, his arms and uniform, and also threw the bag into a garbage can. PO McDonnell then grabbed the drink from § 87(2)(b) and threw the drink into a garbage can.

The officers then started to walk away. § 87(2)(b) and § 87(2)(b) stayed at the bus stop, waiting for another bus to arrive. After a few seconds, the officers started walking back towards § 87(2)(b) and § 87(2)(b). § 87(2)(b) and § 87(2)(b) then started walking away from the officers, and when the officers caught up to them PO Ahearne allegedly stated, "Fuck it, we're arresting you," and placed both § 87(2)(b) and § 87(2)(b) in handcuffs (within **Allegation B**).

§ 87(2)(b) and § 87(2)(b) were taken to the 81st Precinct stationhouse and each released with an additional summons for disorderly conduct. The civilians alleged the disorderly conduct charges were fabricated by PO Ahearne and PO McDonnell (**Allegations E and F**).

Mediation, Criminal, and Civil Histories

- § 87(2)(b) and § 87(2)(b) rejected mediation as an alternative resolution to this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
- A notice of claim inquiry was sent to the NYC comptroller's office on April 25, 2015. A response to this inquiry will be included in the case file upon its receipt

Civilian and Officer CCRB Histories

- PO Ahearne has been a member of the service for two years and there are no substantiated CCRB allegations against him. § 87(2)(g)
- PO McDonnell has been a member of the service for 1 year and this is the only complaint filed against him. § 87(2)(g)
- § 87(2)(b) has filed five previous complaints with the CCRB. § 87(2)(b)

Potential Issues

§ 87(2)(b) missed two previously scheduled appointments for in-person sworn statements on July 22, 2014 and August 1, 2014 without prior notice. After additional contact attempts were made to § 87(2)(b) she contacted the CCRB on September 16, 2014 and refused to provide a sworn statement until after her court appearance date for the summonses issued to her during this incident. After the court date, the investigator made two additional phone calls to § 87(2)(b) and left two voicemails. § 87(2)(b) has not since attempted to contact the CCRB. Therefore, no in-person interview was conducted for § 87(2)(b)

§ 87(2)(b) was identified by § 87(2)(b) as a witness to this incident. § 87(2)(b) provided a phone number for § 87(2)(b) however, each time an investigator called the number, § 87(2)(b) aunt stated that she was unavailable. § 87(2)(b) aunt was asked if there was any additional contact information for § 87(2)(b) which § 87(2)(b) aunt failed to provide. A Lexis Nexis database search was conducted for § 87(2)(b) with negative results. Therefore, the investigation was unable to contact § 87(2)(b) for a statement.

§ 87(2)(g)

Other Evidence

The Bud Light Lime-A-Rita is a mostly white can with a green “Bud Light Lime” logo less than an inch from the top of the can. Just below that logo is large a green stripe with “LIME-A-RITA” in white in the center of the stripe, and underneath “Margarita with a twist” in yellow. On the bottom half of the can is an image of a full margarita glass, and next to it “8% Alc. Vol.” On the bottom of the can “CONTAINS ALCOHOL” is printed (encl. 13G). The Lime-A-Rita has a green colored tab (encl. 13H). The Straw-Ber-Ita has the same layout with the name “STRAW-BER-ITA” instead of “LIME-A-RITA” and the stripe in the middle is red instead of green. The Straw-Ber-Ita has a red tab (encl. 13I-J).

Identification of Subject Officers

PO McDonnell admitted to making the decision to stop § 87(2)(b) and § 87(2)(b) for open containers based upon his own observations. § 87(2)(g)

§ 87(2)(b) noted the names of PO Ahearne and PO McDonnell during the incident and alleged that PO McDonnell spoke rudely to her, made remarks to her based upon race and issued her a disorderly conduct summons in which the charge was fabricated. She alleged that PO Ahearne spoke rudely to § 87(2)(b) decided to arrest both her and § 87(2)(b) after accidentally spilling § 87(2)(b)'s drink on himself, and issued § 87(2)(b) a disorderly conduct summons in

which the charge was fabricated. § 87(2)(g)

Findings and Recommendations

Allegations Not Pleaded

- **Force-** § 87(2)(b) alleged during her original complaint that PO McDonnell repeatedly tried to close the door on her leg, in an attempt to hurt her. However, § 87(2)(b) does not mention this allegation during her subsequent phone statement, or her in-person sworn CCRB statement, nor did she complain of receiving any injuries throughout the entirety of this investigation. Additionally, the allegation was not made by § 87(2)(b) or any other witnesses of the incident. § 87(2)(g)

Allegation A- Abuse of Authority- PO Sean McDonnell stopped § 87(2)(b) and

§ 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were carrying cans containing an alcoholic beverage in bags that, at least partially, covered their labels. It is undisputed that § 87(2)(b) and § 87(2)(b) had these cans opened and were drinking from them periodically, without straws, and that at least the top portion of the can was exposed. It is undisputed that they were stopped by PO McDonnell and PO Ahearne after the officers followed behind § 87(2)(b) and § 87(2)(b) for at least half of a block.

§ 87(2)(g)

PO McDonnell, PO Ahearne and PO Khurana were all consistent that they first noticed § 87(2)(b) and § 87(2)(b) while still inside the van they were assigned. PO McDonnell who alerted PO Khurana and PO McDonnell of § 87(2)(b) and § 87(2)(b)'s violations, § 87(2)(g)

PO McDonnell stated that he saw both the distinctive green tab and as he came closer, the “Bud-Light” label, that confirmed for him that it was a Bud Light Lime-A-Rita.

§ 87(2)(g)

In order to stop an individual an officer needs reasonable suspicion that they are committing, have committed or are about to commit a crime (encl. 1H-R).

§10-125 (b) of the New York City Administrative code states that no person shall drink or consume an alcoholic beverage, or possess, with intent to drink or consume, an open container containing an alcoholic beverage in any public place except at a block party, feast or similar function for which a permit has been obtained (encl. 1A).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B- Discourtesy- PO Edward Ahearne spoke rudely to § 87(2)(b)

Allegation C- Offensive Language- PO Sean McDonnell made remarks to § 87(2)(b) based upon race.

Allegation D- Discourtesy- PO Sean McDonnell spoke rudely to § 87(2)(b)

It is undisputed the PO Ahearne and PO McDonnell were the only officers to speak to § 87(2)(b) and § 87(2)(b) during this interaction, and that PO Ahearne mostly interacted with § 87(2)(b) while PO McDonnell mostly interacted with § 87(2)(b). According to § 87(2)(b) throughout the interaction PO Ahearne stated to § 87(2)(b) “Give me your fucking ID,” “Shut the fuck up and give me your fucking ID,” “Give me the fucking bag,” and “Fuck it, we’re arresting you.” According to § 87(2)(b) PO McDonnell stated, “I’m going to check your ID to see if you have any warrants, because you people usually do,” and “I’ll give you your ID back when I fucking feel like giving it back.” § 87(2)(b) corroborated PO Ahearne saying, “Shut the fuck up” and “Give me that fucking bag.” She also stated that PO McDonnell stated, “You calling me a fucking racist?” § 87(2)(b) did not state that PO McDonnell made any statements about race prior to her asking if they were being arrested because they were black.

PO Ahearne and PO McDonnell both denied making these statements or hearing any officer make these statements. PO Khurana also denied hearing any officer make these statements. The officers were all consistent with the claim that § 87(2)(b) stated to the officers that, if they were white women they wouldn’t have been stopped, and that § 87(2)(b) and § 87(2)(b) stated that the officers were racist for having stopped them. All of the officers also stated that § 87(2)(b) and § 87(2)(b) cursed and threatened the officers during the interaction. § 87(2)(b) and § 87(2)(b) were issued summonses for disorderly conduct (which will be further discussed in Allegations E and F).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) did not allege in her original written statement to the CCRB that any officer stated, “I’ll give you your ID when I fucking feel like giving it back,” nor did § 87(2)(b) allege a discourtesy allegation at all during that portion of the incident. § 87(2)(b) also gave three distinct versions of the offensive language remarks: first, during her written statement, she alleged that all of the officers were generally making sarcastic remarks about black people, then during her written statement she alleged that PO McDonnell stated, “you black people always want to use the race card,” and then

“you niggers”, and during § 87(2)(b) CCRB statement she alleged that PO McDonnell stated “I’m going to check your ID to see if you have any warrants, because you people usually do.”

§ 87(2)(g)

Both § 87(2)(b) and § 87(2)(b) stated that they intended on disputing the summonses.

§ 87(2)(g)

Allegation E- Abuse of Authority- PO Edward Ahearne issued a summons to § 87(2)(b)

Allegation F- Abuse of Authority- PO Sean McDonnell issued a summons to § 87(2)(b)

It is undisputed that § 87(2)(b) and § 87(2)(b) were arrested and taken to the 81st Precinct stationhouse, where they were both released with disorderly conduct summonses. It is undisputed that some of § 87(2)(b)'s drink spilled on PO Ahearne. It is undisputed that directly after § 87(2)(b)'s can was thrown out, and the three officers began walking away. It is undisputed that soon after the officers walked away, they returned and arrested § 87(2)(b) and § 87(2)(b). It is undisputed that approximately 10 feet from where § 87(2)(b) and § 87(2)(b) were standing was a bus stop with a group of people, waiting for the bus. Whether § 87(2)(b) intentionally spilled the drink on PO Ahearne, is in dispute. According to § 87(2)(b) PO Ahearne grabbed the drink from § 87(2)(b)'s hand and in doing so, spilled the drink on himself. According to the officers, PO Ahearne went to grab the drink from § 87(2)(b) and she intentionally spilled the drink on PO Ahearne either by squeezing the can, or by thrusting the can forward to get it to spill on PO Ahearne. According to PO Ahearne, he attempted to grab the drink from § 87(2)(b) and she squeezed it to get the drink on PO Ahearne, however due to the fact that he grabbed at the drink first, he decided that he was partially at fault, and therefore decided not to summons or arrest § 87(2)(b) at that point.

According to § 87(2)(b) all three officers walked away, and less than a minute later, they returned and PO Ahearne stated “Fuck it, we’re arresting you.” § 87(2)(b) stated that PO Ahearne was likely embarrassed about spilling the drink on himself, and arrested § 87(2)(b) and § 87(2)(b) as retaliation. According to the officers, § 87(2)(b) and § 87(2)(b) began calling the officers “crackers” and yelling that they would “Fuck them up” as the officers were walking away. Due to this fact and the fact that there were numerous observers nearby when § 87(2)(b) and § 87(2)(b) allegedly made these statements, the officers decided to arrest § 87(2)(b) and § 87(2)(b) for disorderly conduct.

The investigation was unable to contact the one identified member of the observing group, § 87(2)(b). Attempts to § 87(2)(b) were made, however, and it was discovered that the number listed for § 87(2)(b) was actually her aunt’s house phone. § 87(2)(b) aunt failed to provide additional contact information for § 87(2)(b) despite three separate requests via phone.

Additionally, § 87(2)(b) was uncooperative with providing a sworn statement to the CCRB and her phone statement was brief. § 87(2)(b) did not give any discernible reason for the officers arresting them, nor did she admit that she received a summons for disorderly conduct.

§ 87(2)(g)

§ 87(2)(g)

New York State Penal Law §240.20 states that a person is guilty of disorderly conduct when, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating the risk thereof he engages in violent, tumultuous or threatening behavior or in a public place, he uses abusive or obscene language (encl. 1B).

The New York Disorderly Conduct statute requires that the defendant possess an intent to cause or recklessly create public inconvenience annoyance or alarm so that no inadvertent act may be punished. People v. Tichenor 89 N.Y.2d 769 (1997) (encl. 1C-G).

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____

Title/Signature

Print

Date